

5/7/02

**THIS DISPOSITION
IS NOT CITABLE AS PRECEDENT
OF THE T.T.A.B.**

Paper No. 9
RFC

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Pacific Coast Feather Company

Serial No. 76\015,611

Clark A. Puntigam of Jensen & Puntigam, P.S. for Pacific Coast Feather Company.

Thomas J. Gleason, Trademark Examining Attorney, Law Office 109 (Ronald R. Sussman, Managing Attorney).

Before Sims, Cissel and Bucher, Administrative Trademark Judges.

Opinion by Cissel, Administrative Trademark Judge:

On April 3, 2000, applicant filed the above-identified application to register the mark "TRUWEAVE" on the Principal Register for "bed sheets," in Class 24. The application was based on the assertion that applicant possessed a bona fide intention to use the mark in connection with these goods in commerce.

The first Examining Attorney^{1[1]} refused registration under Section 2(d) the Lanham Act, 15 U.S.C. Section 1052(d), on the ground that if applicant were to use the mark it seeks to register in connection with bed sheets, it would so resemble the mark “TRUWEAR,” which is registered^{2[2]} for “fabrics in the piece, composed of cotton, linen, wool, rayon or nylon fibers, or mixtures of any of the said fibers; bedspreads, sheets, pillow cases, blankets, cotton sheeting, and cotton platform velour in the piece,” in Class 22, that confusion would be likely.

Applicant responded to the refusal to register with argument that confusion would not be likely, but the second Examining Attorney made the refusal final with the second Office Action.

Applicant timely filed a Notice of Appeal, followed by an appeal brief. As noted above, the third Examining Attorney filed a brief in response to applicant’s brief. Applicant did not request an oral hearing before the Board, so we have resolved this appeal based upon consideration of the written record in the application in light of the arguments presented in the briefs and the relevant legal authority.

The predecessor to our primary reviewing Court listed the principal factors to be considered in determining whether confusion is likely in the case of *In re E. I duPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973).

^{1[1]} Mr. Gleason is the third Examining Attorney to have been assigned this application for examination. He wrote the brief in response to applicant’s brief on appeal.

Chief among these factors are the similarity of the marks as to appearance, sound, meaning and commercial impression and the similarity of the goods.

In the case before us, the goods are in part identical (the application lists “bed sheets” and the registration includes “sheets” and “cotton sheeting”). Our focus must therefore be whether confusion is likely by virtue of the use of applicant’s mark, “TRUWEAVE,” on the same goods listed in the cited registration for the mark “TRUWEAR.” Because these marks do not create similar commercial impressions and are otherwise dissimilar, confusion is not likely.

The position taken by the Office is that the marks are “highly similar in appearance and commercial impression.” (Brief, p.3). The Examining Attorney argues that they are similar in appearance because their spellings differ only in that applicant’s mark ends with the letters “VE,” whereas the registered mark ends with the letter “R.” He further contends that the marks convey similar commercial impressions because they each combine the same descriptive prefix with a term which describes or names textile products. In support of this contention, he submitted with his Appeal brief dictionary definitions of “weave” as meaning “the pattern, method of weaving, or construction of a fabric”; and of “wear” as meaning “clothing, especially of a particular kind or for any particular use.”

^{2[2]} Reg. No. 2,513,208, issued on the Principal Register to David Rothschild Company, Inc. on Aug. 2, 1949, and renewed three

These arguments are not well taken. These marks are not similar in appearance, they are not similar in pronunciation, and their connotations, as established by the evidence submitted by the Examining Attorney, are not that similar. This case is analogous to *Kellogg Co. v. Pack 'Em Enterprises*, 21 USPQ2d 1142, 951 F.2d 300 (Fed. Cir. 1991), wherein the Court found that if the marks are dissimilar, even if the products with which they are used (or, as in the instant case, are intended to be used) are the same, confusion is not likely. In the instant case, the marks are different in appearance and pronunciation, and the commercial impression created by applicant's mark, "TRUWEAVE," as applied to bed sheets, is not so similar to the commercial impression created by the cited registered mark, "TRUWEAR," in connection with sheets and cotton sheeting, that confusion would be likely.

DECISION: The refusal to register under Section 2(d) of the Lanham Act is reversed.